

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FLYING DOG BREWERY, LLLP,

Plaintiff,

v

MICHIGAN LIQUOR CONTROL COMMISSION,
NIDA SAMONA, DONALD WEATHERSPOON,
PATRICK GAGLIARDI, COLLEEN POBUR, and
EDWARD GAFFNEY,

Defendants.

No. 1:11-cv-307

HON. ROBERT J. JONKER

ORAL ARGUMENT NOT
REQUESTED

ALAN GURA
Gura & Possessky, PLLC
Attorney for Plaintiff

BILL SCHUETTE (P32532)
Attorney General
DONALD MCGEHEE (P37489)
GERALD WHALEN (P44084)
MELINDA LEONARD (P63638)
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Alcohol & Gambling Enforcement
Division
Attorneys for Defendants

**DEFENDANTS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF
OPPOSING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Defendants request leave to file a supplemental brief opposing Plaintiff's pending Motion for Preliminary Injunction for the reasons stated in the attached brief.

As required by W.D. Mich. LCivR. 7.1(d), Defendants' counsel sought Plaintiff's

counsel's concurrence in this motion by leaving a voicemail message for Plaintiff's counsel requesting concurrence earlier today. As of the time of this filing, Plaintiff's counsel has not yet returned the call.

Respectfully submitted,

Bill Schuette (P32532)
Attorney General

s/Melinda Leonard
Melinda Leonard (P63638)
Assistant Attorney General
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DATED: June 28, 2011

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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL BRIEF OPPOSING PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION**

On June 8, 2011, the Court heard oral arguments on Plaintiff's Motion for Preliminary Injunction. In its motion, Plaintiff requested preliminary injunctive relief prohibiting Defendants from enforcing Mich. Admin. Code r. 436.1611(1)(d) against the sale of Raging Bitch beer in

Michigan and declaring that Raging Bitch beer could be immediately marketed and sold in Michigan.¹

Today, the Michigan Liquor Control Commission reconsidered Plaintiff's request to sell Raging Bitch in Michigan and issued an order reversing its prior denial of Plaintiff's approval request.² As a result, Plaintiff is now free to sell Raging Bitch in Michigan. Because Raging Bitch has now been approved for sale in Michigan, the circumstances have changed, and Plaintiff's request for preliminary relief is now moot. Defendants request leave of this Court to file a supplemental brief opposing Plaintiff's motion based on this change in circumstances.

Respectfully submitted,

Bill Schuette (P32532)
Attorney General

s/Melinda Leonard
Melinda Leonard (P63638)
Assistant Attorney General
Attorneys for Defendants
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DATED: June 28, 2011

CERTIFICATE OF SERVICE

I certify that on June 28, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the below attorney/parties of record. A courtesy copy of the aforementioned document was placed in the mail directed to Judge Robert J. Jonker.

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s/Melinda Leonard
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¹ Exhibit A, Docket Entry #13 filed April 13, 2011, Proposed Order.

² Exhibit B, Administrative Order of the Michigan Liquor Control Commission dated June 28, 2011.